

PETRON OIL CORPORATION : CIVIL ACTION
:
v. :
:
SEITEL GAS AND ENERGY, INC. : NO. 97-0573

The instant action arises from the termination of several gas servicing agreements between the plaintiff, Petron Oil Corporation ("Petron"), and the defendant, Seitel Gas and Energy, Inc. ("SG&E"). To recover the costs of seeking gas from third party providers following the termination of the contract, the plaintiff initiated a breach of contract suit in the Court of Common Pleas of Chester County on January 2, 1997. On January 27, 1997, the defendant removed the case to this Court pursuant to 28 U.S.C. § 1441. In its notice of removal, the defendant asserts that this Court has original jurisdiction over the matter, pursuant to 28 U.S.C. § 1332(a)(1), because there is complete diversity of citizenship and the amount of controversy, excluding interest and costs, exceeds \$75,000. (Notice of Removal at ¶¶ 5-6.) Shortly, thereafter, the plaintiff filed the instant motion to remand the case back to the Common Pleas Court.

II. DISCUSSION

A Court may remand a case to state court for lack of subject matter jurisdiction, even though the case has been removed to federal court.¹ 28 U.S.C. § 1447(c) (1994 & Supp. 1997). "It is well settled that federal subject matter jurisdiction over a case removed from a state court must be determined as of the time of removal." TJS Brokerage & Co. v. CRST, Inc. 958 F. Supp. 220,221 (E.D. Pa. 1997) (citing Caterpillar, Inc. v. Lewis, 117 S. Ct. 467, 473 (1996); American Fire & Cas. Co. v. Finn, 341 U.S. 6, 14 (1951); Abels v. State Farm Fire & Cas. Co., 770 F.2d 26, 29 (3d Cir. 1985)). The Court makes this determination by examining the jurisdictional amount in effect on the date of removal. Id. "Any prior history in state court is irrelevant." Id.

On October 19, 1996, Congress enacted the Federal Courts Improvement Act of 1996 ("Act"), Pub. L. No. 104-317, § 205, 110 Stat. 3847, 3850 (1996). Central Fiber Corp. v. Site Servs. Ltd., 962 F. Supp. 1426, 1427 (D. Kan. 1997). The Act

¹/ Congress has provided that:

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expense, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

28 U.S.C. § 1447(c) (1994 & Supp. 1997).

amended Section 1332(a) by increasing the amount in controversy requirement for diversity jurisdiction from \$50,000 to \$75,000.\²

Id. "The amendment became effective ninety days after its enactment, January 17, 1997 and is not retroactive." Id.

In this case, the plaintiff argues that this Court must remand the case to state court because the complaint does not state damages in excess of \$75,000, as required by the amendment to 28 U.S.C. § 1332(a). The defendant, on the other hand, argues that the amendment does not apply, and thus the Court has subject matter jurisdiction because the plaintiff, by its own admission, requests damages in excess of \$50,000.

After reviewing the record, this Court finds that the plaintiff filed its complaint in state court on January 2, 1997. Almost four weeks later, on January 27, 1997, the defendants

²/ The statute now provides as follows:

The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For purposes of this section, section 1355, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

28 U.S.C. § 1332(a) (1993 & Supp. 1997).

removed the case to this Court, arguing that "the amount in controversy, exclusive of interest and costs, exceeds seventy five [thousand] (\$75,000.00) dollars." (Notice of Removal at ¶ 5.) Because the case was removed ten days after the Act's amendments became effective, the jurisdictional amount in effect was \$75,000. Therefore, this Court concludes that the plaintiff's complaint must state an amount in controversy in excess of \$75,000 for it to exercise jurisdiction over the plaintiff's claims.

To determine the amount in controversy, the Court must look at the complaint itself. Angus v. Shiley, Inc., 989 F.2d 142, 145 (3d Cir. 1993). If the Court finds that the plaintiff is seeks damages in excess of \$75,000, then the jurisdictional minimum is met. Id. If, however, the Court cannot conclude to a "legal certainty" that the claim is really for less than the jurisdictional amount, the case must be remanded to the state court. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1939); Suber v. Chrysler Corp., 104 F.3d 578, 583 (3d Cir. 1997); Garnder v. Beasley FM Acquisition Corp., No. CIV.A.97-2900, 1997 WL 325794, at *3 (E.D. Pa. June 6, 1997).

In the instant case, the plaintiff asserts that the amount in controversy is less than \$75,000, the jurisdictional minimum. The plaintiff notes that in its complaint, it enumerates the cost of cover for each claim and then prays for

damages in the "Wherefore" provisions.\³ The plaintiff asserts that the enumerated damages pled in the complaint total \$74,952.32. (Pl.'s Mot. at ¶ 8; Pl.'s Reply at 3.) The defendant, however, disagrees with the plaintiff's assertions and maintains that the amount in controversy is \$127,470.95, the sum of the "Wherefore" provisions. (Def.'s Mem. at 4.) Furthermore, it asserts that correspondence between the parties demonstrates

³/ The plaintiff alleges the following damages for Count I:

As a result of interruption of service Petron was forced to "cover" and supply other natural gas to its customer, Herr's, at a cost for the month of April 1996, of \$27,470.95.

WHEREFORE, Petron prays for damages in an amount in excess of Twenty-Seven Thousand Four Hundred Seventy Dollars and Ninety-Five Cents (\$27,470.95), plus interest and costs of suit.

(Compl. at ¶ 25.) The damages for Count II are alleged as follows:

As a result of the interruption of service, Petron was forced to "cover" and supply other natural gas to its customer, Reynold's, at a cost for the months of:

April, 1996	\$12,149.90	
May, 1996	\$ 3,938.60	
June, 1996	\$ 3,651.68	
July, 1996	\$ 5,813.10	
August 1996	\$ 3,642.16	
September 1996	\$ 1,997.80	
October 1996		\$ 5,751.27

WHEREFORE, Petron pays for damages in the amount believed to be in excess of Fifty Thousand Dollars (\$50,000.00), plus interest and costs of suit.

(Compl. at ¶ 29.) The plaintiff alleges the following damages for Count III:

As a result of the breach by SG&E, Petron has been forced to "cover" in the marketplace, the gas volume shortfall to Stroh's Brewery at a cost of Ten Thousand Five Hundred Thirty-Six Dollars and Eighty-Six Cents (\$10,536.86).

WHEREFORE, Petron pays for damages in the amount believed to be in excess of Fifty Thousand Dollars (\$50,000.00), plus interest and costs of suit.

(Compl. at ¶ 38.)

that the enumerated damages exceed \$75,000.00.\⁴ Also, it maintains that because the plaintiff previously made a greater demand, it may not avoid the jurisdictional minimum by artfully pleading its complaint. (Def.'s Resp. at 7.)

After reviewing the complaint, this Court finds that the "Wherefore" provisions following each count represent the cumulative total of damages, and not the damages sought for each count as argued by the defendant.\⁵ Therefore, this Court concludes that the amount in controversy equals \$74,952.32, \$47.68 less than the jurisdictional amount. Furthermore, it is irrelevant that the plaintiff alleges damages in its complaint which are less than its president previously demanded in a letter to the defendant. As master of its complaint, the plaintiff may chose to seek damages less than what it is entitled, to keep its state law claims out of federal court. See Caterpillar, Inc. v. Williams, 482 U.S. 386, 399 (1987) ("[T]he plaintiff is the master of the complaint . . . [and] may, by eschewing claims based on federal law, choose to have the cause heard in state court."). Therefore, because this Court lacks jurisdiction over

⁴/ Specifically, the defendant argues that in a July 17, 1996 letter, Charles F. Hurchalla, Petron's president, seeks damages which if substituted for the damages enumerated in the complaint, result in damages of \$76,797.58. (Def.'s Resp., at 7.)

⁵/ The cumulative total of damages after Count I is \$27,470.95, which corresponds with the "Wherefore" provision at Paragraph 25. When the damages alleged in Count II are added to this sum, the cumulative total is \$64,415.46, which corresponds with the "Wherefore" provision at Paragraph 29. Likewise, when the damages for Count III are added to the damages alleged in the prior counts, the cumulative total becomes \$74,952.32. This also corresponds with the "Wherefore" provision at Paragraph 38.

the subject matter of the claims in this complaint, the case is remanded to the Court of Common Pleas for Chester County.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETRON OIL CORPORATION	:	CIVIL ACTION
	:	
v.	:	
	:	
SEITEL GAS AND ENERGY, INC.	:	NO. 97-0573

O R D E R

AND NOW, this 16th day of July, 1997, upon consideration of the Plaintiff's Motion to Remand (Docket No. 5) and the Defendant's Response thereto, IT IS HEREBY ORDERED that the Clerk of the Court is directed to remand this action to the Court of Common Pleas of Chester County, Pennsylvania.

BY THE COURT:

HERBERT J. HUTTON, J.